

1
2
3
4
5
6
7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 JENNIFER STRANGE, MAGAN MORRIS, on
11 behalf of themselves and all others similarly
12 situated,

13 Plaintiffs,

14 v.

15 LES SCHWAB TIRE CENTERS OF OREGON,
16 INC., et al.,

17 Defendants.

CASE NO. C06-045RSM

ORDER ON MOTIONS IN LIMINE

18 EQUAL EMPLOYMENT OPPORTUNITY
19 COMMISSION,

20 Plaintiff,

21 v.

22 LES SCHWAB TIRE CENTERS OF
23 WASHINGTON, INC., et al.,

24 Defendants.

25 On September 9, 2009, at the pretrial conference in this matter, the Court heard argument on the
26 pending motions in limine and made preliminary rulings. This Order formalizes those rulings.

1 (1) Defendant's Motion to Exclude References to Les Schwab's Book (Dkt. # 237)

2 Defendant moved to exclude references to Les Schwab's book, "Pride in Performance: Keep it
3 Going", and the book itself, as hearsay. Plaintiff Jennifer Strange seeks to testify that she was provided
4 a copy of the book when she began working for Les Schwab Tire Centers, and was told to "learn it, live
5 it and love it." The Court has ruled that she may so testify and that the book itself is admissible as
6 evidence, with a limiting instruction to be provided by defendant.

7 The motion in limine is accordingly DENIED.

8 (2) Defendant's Motion to Exclude References to Superseded Policy # 34 (Dkt. # 239)

9 Defendant moved to exclude references to, and admission of, a superseded version of Policy
10 #34, regarding workplace discrimination, contending that the pre-December 2002 version is not relevant
11 to the time frame of this lawsuit. However, both individual plaintiffs seek to testify that the earlier
12 version was the one they actually saw posted in the workplace during 2003-2004. The motion in limine
13 is accordingly DENIED.

14 (3) Plaintiffs' Motions in Limine (Dkt. # 243)

15 a. Motion to exclude reference to post-charge job offers: the Court directed the parties to present
16 supplemental briefing on this issue, and reserves ruling at this time.

17 b. Motion to exclude references to plaintiff Morris' knee surgery and medical records: DENIED.

18 c. Motion to exclude references to plaintiff Morris' relationship with an Assistant Manager:
19 DENIED. This evidence may be relevant to the issue of whether plaintiff Morris would be considered
20 eligible for promotion to Assistant Manager.

21 On the balance of this motion the parties reached agreement and the Court did not rule.

22 (4) Defendant's Omnibus Motion in Limine (Dkt. # 263)

23 a. Documents from Jeff Beba's personnel file: the motion to exclude documents is DENIED as
24 to documents dated before October, 2004, and GRANTED as to later documents.

25 b. Privilege log: the motion is GRANTED as to the privilege log itself. However, as defendant
26 may have waived privilege as to certain documents identified in the log, the Court will conduct *in*
27 *camera* review to determine admissibility where appropriate.

1 c. References to the “inexorable zero”: defendant seeks to exclude reference to the number of
2 women employed as managers and assistant managers in the fifty years prior to 2004. Defendant does
3 not dispute that the number was “zero” but argues that this is not relevant to the individual plaintiffs’
4 claims, and would improperly inject “pattern and practice” evidence into the individual plaintiffs’
5 lawsuit. However, the number of women managers during the time they were employed is a fact to
6 which the individual plaintiffs may testify, to the extent each has personal knowledge. Similarly, other
7 witnesses, including defendant’s witness Ms. Hueske, may be questioned as to their knowledge
8 regarding the number of female managers in the 2003-2004 time period. Ms. Hueske can also testify to
9 the fact that the number of women in the applicant pool (i.e. Sales and Service employees) was very low
10 or zero, and explain the significance of that fact for promotion of women to management positions.

11 Defendant’s motion in limine regarding the “inexorable zero” is accordingly DENIED.

12 d. References to events outside the statute of limitations period: Defendant seeks to exclude
13 testimony regarding events that occurred prior to January 11, 2003, the beginning of the statutory period
14 for the individual plaintiffs’ hiring and promotion claims under state law. The Court has ruled that the
15 individual plaintiffs may testify to events that occurred prior to that date as part of their history with
16 defendant’s company. The motion in limine is accordingly DENIED. However, the verdict form will
17 specify what dates may actually be considered for the purpose of each plaintiff’s hiring and promotion
18 claims.

19 (5) 2007 Ethics Point complaint (Dkt. # 265)

20 Defendants have moved to exclude evidence of a 2007 complaint by an unidentified employee
21 regarding events that occurred in April and May of 2007. This complaint is not relevant to either
22 plaintiff’s claim. The motion in limine is accordingly GRANTED.

23 Dated this 14th day of September, 2009.

24 

25 RICARDO S. MARTINEZ
26 UNITED STATES DISTRICT JUDGE
27